

HOUSE No. 2443

By Ms. St. Fleur of Boston, petition of Thomas M. Menino and others for legislation to establish a green building income tax credit. Revenue.

The Commonwealth of Massachusetts

PETITION OF:

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In the Year Two Thousand and Five.

AN ACT ESTABLISHING A GREEN BUILDING INCOME TAX CREDIT.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

- 1 SECTION 1. Declaration of policy and statement of purposes.
- 2 It is the policy of Massachusetts to encourage the construction,
- 3 rehabilitation and maintenance of buildings in this state in such a
- 4 manner as to:
 - 5 1. promote better environmental standards for the construction,
 - 6 rehabilitation and maintenance of buildings in the state;
 - 7 2. improve energy efficiency and increase generation of energy
 - 8 through renewable and clean energy technologies;
 - 9 3. increase the demand for environmentally preferable building
 - 10 materials, finishes and furnishings;
 - 11 4. improve the environment by decreasing the discharge of pol-
 - 12 lutants from buildings;
 - 13 5. create industry and public awareness of new technologies
 - 14 that can improve the quality of life for building occupants; and
 - 15 6. improve the health and productivity of building occupants.
- 16 In order to facilitate the foregoing policies, the legislature
- 17 hereby creates a business and personal income tax credit to pro-
- 18 mote the construction, rehabilitation and maintenance of buildings
- 19 that meet the criteria set forth in this act.

1 SECTION 2. Tax Law Changes. The tax law is amended by
2 adding a new subsection (1) to chapter 62, section 6 to read as
3 follows:

4 (A) ALLOWANCE OF CREDIT.

5 (1) GREEN BUILDING CREDIT. A taxpayer subject to tax
6 under this chapter shall be allowed a green building credit against
7 such tax, pursuant to the provisions referenced in subdivision (F)
8 of this section. Provided, however, no credit shall be allowed
9 under this section unless the taxpayer has complied with the
10 applicable requirements of paragraph two of subdivision (D) of
11 this section (relating to reports to the Division of Energy
12 Resources, hereinafter referred to as DOER).

13 The amount of the credit shall be the sum of the credit compo-
14 nents specified in paragraphs two through seven of this subdivi-
15 sion. Provided, however, the amount of each such credit
16 component shall not exceed the limit set forth in the initial credit
17 component certificate obtained pursuant to subdivision (C) of this
18 section. In the determination of such credit components, no cost
19 paid or incurred by the taxpayer shall be the basis for more than
20 one such component.

21 (b) Credit to successor owner. If a credit is allowed to a
22 building owner pursuant to this subdivision with respect to prop-
23 erty, and such property (or an interest therein) is sold, the credit
24 for the period after the sale which would have been allowable
25 under this subdivision to the prior owner had the property not
26 been sold shall be allowable to the new owner. Credit for the year
27 of sale shall be allocated between the parties on the basis of the
28 number of days during such year that the property of interest was
29 held by each.

30 (c) Credit to successor tenant. If a credit is allowed to a tenant
31 pursuant to this subdivision with respect to property, and if such
32 tenancy is terminated but such property remains in use in the
33 building by a successor tenant, the credit for the period after such
34 termination which would have been allowable under this subdivi-
35 sion to the prior tenant had the tenancy not been terminated shall
36 be allowable to the successor tenant. Credit for the year of termi-
37 nation shall be allocated between the parties on the basis of the
38 number of days during such year that the property was used by
39 each.

40 (d) Notwithstanding any other provision of law to the contrary,
41 in the case of allowance of credit under this section to a successor
42 owner or tenant, as provided in subparagraph (b) or (c) of this
43 paragraph, the commissioner of DOER shall have the authority to
44 reveal to the successor owner or tenant any information, with
45 respect to the credit of the prior owner or tenant, which is the
46 basis for the denial in whole or in part of the credit claimed by
47 such successor owner or tenant.

48 (2) GREEN WHOLE-BUILDING CREDIT COMPONENT.
49 The green whole-building credit component shall be equal to the
50 applicable percentage of the allowable costs paid or incurred by
51 the taxpayer (whether owner or tenant), for either the construction
52 of a green building or the rehabilitation of a building which is not
53 a green building to be a green building. Provided, however, the
54 credit component shall not exceed the maximum amount specified
55 in the initial credit component certificate. The applicable per-
56 centage shall be 1.4 percent, except that if the building is located
57 in an economic development area, the applicable percentage shall
58 be 1.6 percent. The credit component amount so determined shall
59 be allowed for the credit allowance year, but only if:

60 (a) the taxpayer has obtained and filed both an initial credit
61 component certificate and an eligibility certificate issued pursuant
62 to subdivision (C) of this section,

63 (b) a certificate of occupancy for the building has been issued,
64 and

65 (c) where the credit allowance year is a year described in sub-
66 paragraph (b) of paragraph (2-a) of subdivision (B) of this section,
67 the green building or rehabilitation remains in service during such
68 year.

69 Such credit component amount shall be allowed also for each
70 of the next four succeeding taxable years with respect to which
71 the taxpayer has obtained and filed an eligibility certificate pur-
72 suant to subdivision (C) of this section. Provided, further, the
73 allowable costs may not exceed, in the aggregate, one hundred
74 fifty dollars per square foot with respect to the portion of the
75 building which comprises the base building and seventy-five dol-
76 lars per square foot with respect to the portion of the building
77 which comprises the tenant space.

78 (3) GREEN BASE BUILDING CREDIT COMPONENT. The
79 green base building credit component shall be equal to the applic-
80 able percentage of the allowable costs paid or incurred by the tax-
81 payer, if the owner, for either the construction of a green base
82 building or for the rehabilitation of a base building which is not a
83 green base building to be a green base building. Provided, how-
84 ever, the credit component shall not exceed the maximum amount
85 specified in the initial credit component certificate. The applicable
86 percentage shall be 1 percent, except that if the building is located
87 in an economic development area, the applicable percentage shall
88 be 1.2 percent. The credit component amount so determined shall
89 be allowed for the credit allowance year, but only if:

90 (a) the taxpayer has obtained and filed both an initial credit
91 component certificate and an eligibility certificate issued pursuant
92 to subdivision (C) of this section,

93 (b) a certificate of occupancy for the building has been issued
94 and

95 (c) where the credit allowance year is a year described in sub-
96 paragraph (b) of paragraph (2-a) of subdivision (B) of this section,
97 the green base building or rehabilitation of a base building
98 remains in service during such year.

99 Such credit component amount shall be allowed also for each
100 of the next four succeeding taxable years with respect to which
101 the taxpayer has obtained and filed an eligibility certificate pur-
102 suant to subdivision (C) of this section. Provided, further, the
103 allowable costs for the base building may not exceed, in the
104 aggregate, one hundred fifty dollars per square foot.

105 (4) GREEN TENANT SPACE CREDIT COMPONENT. The
106 green tenant space credit component shall be equal to the applic-
107 able percentage of allowable costs for tenant improvements paid
108 or incurred by the taxpayer (whether owner or tenant) in con-
109 structing (including completing) tenant space, or rehabilitating
110 tenant space which is not green tenant space to be green tenant
111 space. Provided, however, the credit component shall not exceed
112 the maximum amount specified in the initial credit component
113 certificate. The applicable percentage shall be 1 percent, except
114 that if the building is located in an economic development area the
115 applicable percentage shall be 1.2 percent. Provided, however,
116 that the owner, or a tenant who occupies fewer than ten thousand

117 square feet, shall qualify for such green tenant space credit com-
118 ponent only in the event that the base building is a green base
119 building. The credit component amount so determined shall be
120 allowed for the credit allowance year, but only if:

121 (a) the taxpayer has obtained and filed an initial credit compo-
122 nent certificate and an eligibility certificate issued pursuant to
123 subdivision (C) of this section; and

124 (b) where the credit allowance year is a year described in sub-
125 paragraph (b) of paragraph (2-a) of subdivision (B) of this section,
126 the construction, completion or rehabilitation remains in service
127 during such year.

128 Such credit component amount shall be allowed also for each
129 of the next four succeeding taxable years with respect to which
130 the taxpayer has obtained and filed an eligibility certificate pur-
131 suant to subdivision (C) of this section. Provided, however, the
132 allowable costs for tenant space shall not exceed, in the aggregate,
133 seventy-five dollars per square foot. In the event that both an
134 owner and tenant incur such costs for tenant space with respect to
135 the same tenant space and such costs in the aggregate exceed
136 seventy-five dollars per square foot, the owner shall have priority
137 as to costs constituting the basis for the green tenant space credit
138 component.

139 (5) FUEL CELL CREDIT COMPONENT. A fuel cell credit
140 component shall be allowed for the installation of a fuel cell
141 which is a qualifying alternate energy source, installed to serve a
142 green building, green base building or green tenant space. The
143 amount of the credit component shall be six percent of the sum of
144 the capitalized costs paid or incurred by the taxpayer with respect
145 to each fuel cell installed to serve such building or space,
146 including the cost of the foundation or platform and the labor cost
147 associated with installation, such capitalized costs not to exceed
148 one thousand dollars per kilowatt of installed dc rated capacity.
149 Provided, however, the credit component shall not exceed the
150 maximum amount specified in the initial credit component certifi-
151 cate. The fuel cell credit component amount so determined shall
152 be allowed for the credit allowance year, but only if:

153 (a) the taxpayer has obtained and filed an initial credit compo-
154 nent certificate and an eligibility certificate issued pursuant to
155 subdivision (C) of this section; and

156 (b) where the credit allowance year is a year described in sub-
157 paragraph (b) of paragraph (2-a) of subdivision (B) of this section,
158 the fuel cell remains in service during such year.

159 Such credit component amount shall be allowed also with
160 respect to each of the four taxable years next following during
161 which the fuel cell remains in service. Provided, however, that the
162 amount of any federal, state or local grant received by the tax-
163 payer and used for the purchase and/or installation of such fuel
164 cell and which was not included in the federal gross income of the
165 taxpayer shall be subtracted from the amount of such cost.

166 (6) PHOTOVOLTAIC MODULE CREDIT COMPONENT. A
167 photovoltaic module credit component shall be allowed for the
168 installation of photovoltaic modules which constitute a qualifying
169 alternate energy source installed to serve a green building, green
170 base building or green tenant space. The amount of the credit
171 component shall be twenty percent of the incremental cost paid or
172 incurred by the taxpayer for building-integrated photovoltaic
173 modules and five percent of the cost of non-building-integrated
174 photovoltaic modules, in either case such cost not to exceed the
175 product of (i) three dollars and (ii) the number of watts included
176 in the dc rated capacity of the photovoltaic modules. Provided,
177 however, the credit component shall not exceed the maximum
178 amount specified in the initial credit component certificate. The
179 credit component amount so determined shall be allowed for the
180 credit allowance year, but only if:

181 (a) the taxpayer has obtained and filed an initial credit compo-
182 nent certificate and an eligibility certificate issued pursuant to
183 subdivision (C) of this section; and

184 (b) where the credit allowance year is a year described in sub-
185 paragraph (b) of paragraph (2-a) of subdivision (B) of this section,
186 the modules remain in service during such year.

187 Such credit amount shall be allowed also for the four taxable
188 years next following during which the modules remain in service.
189 Provided, however, that the amount of any federal, state or local
190 grant received by the taxpayer and used for the purchase and/or
191 installation of such photovoltaic equipment and which was not
192 included in the federal gross income of the taxpayer shall be sub-
193 tracted from the amount of such cost.

194 (B) DEFINITIONS.

195 As used in this section, the following terms shall have the
196 following meanings:

197 (1) “allowable costs” means amounts properly chargeable to
198 capital account (other than for land), which are paid or incurred
199 within six months of the effective date of this section, for: con-
200 struction or rehabilitation; commissioning costs; interest paid or
201 incurred during the construction or rehabilitation period; legal,
202 architectural, engineering and other professional fees allocable to
203 construction or rehabilitation; closing costs for construction, reha-
204 bilitation or mortgage loans; recording taxes and filing fees
205 incurred with respect to construction or rehabilitation; site costs
206 (such as temporary electric wiring, scaffolding, demolition costs,
207 and fencing and security facilities); and costs of furniture, car-
208 peting, partitions, walls and wall coverings, ceilings, drapes,
209 blinds, lighting, plumbing, electrical wiring and ventilation; pro-
210 vided that such costs shall not include the cost of telephone sys-
211 tems and computers (other than electrical wiring costs) and shall
212 not include the cost of fuel cells or photovoltaic modules
213 (including installation).

214 (2) “base building” means all areas of a building not intended
215 for occupancy by a tenant or owner, including but not limited to
216 the structural components of the building, exterior walls, floors,
217 windows, roofs, foundations, chimneys and stacks, parking areas,
218 mechanical rooms and mechanical systems, and owner-controlled
219 and/or operated service spaces, sidewalks, main lobby, shafts and
220 vertical transportation mechanisms, stairways and corridors.

221 (2a) “credit allowance year” means the later of:

222 (a) the taxable year during which the property, construction,
223 completion or rehabilitation referred to in paragraph one of subdi-
224 vision (A) of this section has been placed in service or has
225 received a final certificate of occupancy, or

226 (b) the first taxable year with respect to which the credit may
227 be claimed pursuant to the initial credit component certificate
228 issued pursuant to subdivision (C) of this section.

229 (3) “commissioning” means the testing and fine-tuning of heat,
230 ventilating and air conditioning and other systems to assure proper
231 functioning and adherence to design criteria and the preparation of
232 system operation manuals and instruction of maintenance per-
233 sonnel.

234 (4) “DOER” means the Massachusetts Division of Energy
235 Resources. “EPA” means the United States Environmental Protec-
236 tion Agency.

237 (5) “economic development area” means an area as defined by
238 section 1, of chapter 121C or an empowerment zone or enterprise
239 community pursuant to section 1391 of the Internal Revenue
240 Code.

241 (6) “eligible building” means a building located in this state
242 which is:

243 (a) classified as commercial pursuant to the Massachusetts state
244 building code or similarly classified under any subsequent code;
245 provided that any such building contains at least twenty thousand
246 square feet of interior space, or

247 (b) a residential multi-family building with at least twelve
248 dwelling units that contain at least twenty thousand square feet of
249 interior space, or

250 (c) one or more residential multi-family buildings with at least
251 two dwelling units that are part of a single or phased construction
252 project that contains, in the aggregate, at least twenty thousand
253 square feet of interior space; provided that in any single phase of
254 such project at least ten thousand square feet of interior space is
255 under construction or rehabilitation, or

256 (d) any combination of buildings described in subparagraphs
257 (a), (b) and (c) of this paragraph, and

258 (e) is not a building located on freshwater wetlands or tidal
259 wetlands as defined by sections 40 and 40A of chapter 131, or on
260 wetlands such that the construction thereof requires a permit pur-
261 suant to section 404 of the federal clean water act (33 U.S.C.
262 s 1344).

263 (7) “energy code” means any and all chapters within the Massa-
264 chusetts State Building Code that cover in whole or in part energy
265 or energy-related issues.

266 (8) “fuel cell” means a device that produces electricity directly
267 from hydrogen or hydrocarbon fuel through a non-combustive
268 electrochemical process.

269 (9) “green base building” means a base building which is part
270 of an eligible building and which meets the following standards:

271 (a) energy and energy efficiency.

272 (i) energy use is no more than sixty-five percent (in the case of
273 new construction of a base building) or seventy-five percent (in
274 the case of rehabilitation of a base building) of the use permitted
275 under the energy code or, in the event such standard is revised or
276 superseded, energy use shall meet such other energy efficiency
277 standards that DOER shall establish in regulations within six
278 months of the effective date of this section pursuant to paragraph
279 one of subdivision (E) of this section, in effect at the time the base
280 building or rehabilitation thereof is placed in service.

281 (ii) all appliances and any heating, cooling and water heating
282 equipment used in the base building and subject to the regulations
283 promulgated by DOER within six months of the effective date of
284 this section pursuant to paragraph one of subdivision (e) of this
285 section, shall meet the standards established by such regulations
286 in effect at the time the base building or rehabilitation thereof is
287 placed in service.

288 (b) Zoning, indoor air quality, building materials, finishes and
289 furnishings.

290 (i) the base building shall comply with all applicable zoning,
291 land use and erosion control requirements, stormwater manage-
292 ment ordinances, building code requirements and environmental
293 regulations. In the case of the rehabilitation of an existing
294 building, all existing environmental hazards shall be identified
295 and managed in accordance with applicable laws, regulations and
296 industry guidelines.

297 (ii) buildings classified pursuant to the Massachusetts state
298 building code, or similarly classified under any subsequent code,
299 shall meet the following indoor air quality requirements:

300 (iii) ventilation and exchange of air shall meet the standards
301 established by regulations promulgated by DOER within six
302 months of the effective date of this section pursuant to paragraph
303 two of subdivision (E) of this section;

304 (iv) if smoking is permitted in specific areas of the building,
305 separate air ventilation and circulation shall be provided for
306 smoking and non-smoking areas;

307 (v) the ventilation system shall include an air purging system
308 that is capable of replacing one hundred percent of the air on any
309 floor, on a minimum of two floors at a time. The air shall be
310 purged for a period of one week on every floor immediately prior

311 to initial occupancy and on any floor that undergoes renovation
312 immediately prior to re-occupancy; provided that, if a taxpayer
313 obtains certification from a licensed architect, engineer, certified
314 industrial hygienist, or other licensed or certified professional
315 whom the commissioner of environmental conservation shall
316 approve, pursuant to regulations, verifying that offgassing and any
317 other contamination can be reduced to comparable levels in less
318 than one week, the period of purging may be shortened. The tax-
319 payer shall maintain a copy of such certification in accordance
320 with the provisions of subdivision (D) of this section.

321 (vi) building fresh air intake shall be located a minimum of
322 twenty-five feet away from loading areas, building exhaust fans,
323 cooling towers and other point sources of contamination.

324 (vii) during construction or rehabilitation, the ventilation
325 system components and pathways shall be protected from contam-
326 ination in accordance with an indoor air quality management plan
327 for the construction or rehabilitation process that meets the stan-
328 dards established in regulations promulgated by six months of the
329 effective date of this section pursuant to paragraph two of subdivi-
330 sion (E) of this section. In the event that such areas are not pro-
331 tected from contamination in accordance with such standards, they
332 shall be cleaned prior to occupancy.

333 (viii) a licensed engineer, certified industrial hygienist, or other
334 licensed or certified professional whom the commissioner of envi-
335 ronmental conservation shall approve, pursuant to regulations,
336 shall conduct indoor air quality testing with respect to the entire
337 building immediately following occupancy, if any, and on an
338 annual basis, to monitor supply and return air and ambient air for
339 carbon monoxide, carbon dioxide, total volatile organic com-
340 pounds, radon, and particulate matter. Provided, however, once
341 radon measurements have been found to be satisfactory, subse-
342 quent annual testing is not required. The taxpayer shall record
343 baseline readings immediately following occupancy, if any, and
344 annually thereafter. In the event that the taxpayer does not estab-
345 lish that during a taxable year during which any part of the
346 building is occupied, indoor air quality met the standards estab-
347 lished in regulations promulgated by DOER within six months of
348 the effective date of this section pursuant to paragraph two of sub-
349 division (E) of this section, the base building shall not constitute a
350 green base building.

351 (ix) the mechanical plant of the building shall be commissioned
352 in accordance with the standards established in regulations pro-
353 mulgated by DOER within six months of the effective date of this
354 section pursuant to subparagraph (d) of paragraph one of subdivi-
355 sion (E) of this section, which standards shall be informed by doc-
356 uments such as ASHRAE G-1 and the United States General
357 Services Administration “Model Commissioning Plan and Guide
358 Specifications”. For purposes of this subparagraph the term
359 “ASHRAE” means the american society of heating, refrigerating
360 and air conditioning engineers.

361 (x) separate waste disposal chutes or a carousel compactor
362 system for recyclable materials shall be provided for the recycling
363 of waste by occupants, or recycling shall be otherwise facilitated
364 by, at a minimum, providing a readily accessible designated col-
365 lection area or areas with sufficient space to store recyclable mate-
366 rials separately between collection dates.

367 (xi) all plumbing fixtures in the public areas of the building
368 shall meet the plumbing fixture requirements of the State
369 Plumbing Code or any successor provision in effect at the time the
370 building or rehabilitation is placed in service.

371 (xii) prior to initial occupancy and upon request, the owner of
372 the building shall provide each tenant with:

373 (a) written notification of the opportunity to apply for a tax
374 credit pursuant to this section, and

375 (b) written guidelines regarding opportunities to improve the
376 energy efficiency and air quality of tenant space and to reduce and
377 recycle waste streams.

378 (xiii) all building materials, finishes and furnishings used in the
379 base building and subject to the regulations promulgated by
380 DOER within six months of the effective date of this section pur-
381 suant to subparagraph (a) of paragraph three of subdivision (E) of
382 this section, shall meet the standards established by such regula-
383 tions in effect at the time the building or rehabilitation is placed in
384 service; provided further that with respect to furnishings, this
385 requirement shall apply only to newly purchased items.

386 (xiv) all tenant space in the building occupied by the owner
387 must be green tenant space.

388 (10) “green building” means a building wherein the base
389 building is a green base building and all tenant space is green
390 tenant space.

391 (11) “green tenant space” means tenant space in a building if
392 such building is an eligible building and if such tenant space com-
393 plies with the following requirements:

394 (a) energy and energy efficiency.

395 (i) energy use for tenant space is no more than sixty-five per-
396 cent (in the case of new construction) or seventy-five percent (in
397 the case of rehabilitation) of the use permitted under the energy
398 code or, in the event such standard is revised or superseded,
399 energy use shall meet such other energy efficiency standards that
400 DOER shall establish in regulations promulgated within six
401 months of the effective date of this section, pursuant to paragraph
402 one of subdivision (E) of this section and within six months of the
403 effective date of this section, in effect at the time the improve-
404 ments with respect to which a tax credit is claimed are placed in
405 service.

406 (ii) all appliances and any heating, cooling and water heating
407 equipment used in the tenant space and subject to the regulations
408 promulgated by DOER within six months of the effective date of
409 this section pursuant to paragraph one of subdivision (E) of this
410 section shall meet the standards established by such regulations
411 or, in the event that such standards are revised, the standards in
412 effect at the time the improvements with respect to which a tax
413 credit is claimed are placed in service.

414 (b) Code requirements, indoor air quality, building materials,
415 finishes and furnishings.

416 (i) the tenant space shall comply with all applicable building
417 code requirements and environmental regulations and, with
418 respect to projects other than new construction, all existing envi-
419 ronmental hazards shall be identified and managed in accordance
420 with applicable laws, regulations and industry guidelines.

421 (ii) in the case of buildings classified, pursuant to the Massa-
422 chusetts state building code, or similarly classified under any sub-
423 sequent code, ventilation and exchange of indoor-outdoor air shall
424 meet the standards established in regulations promulgated by
425 DOER within six months of the effective date of this section pur-
426 suant to paragraph two of subdivision (E) of this section.

427 (iii) for buildings in which smoking is permitted, the taxpayer
428 shall ensure that, if smoking is permitted in the tenant space, it is
429 permitted only in areas in which the air ventilation and circulation
430 is separate from that for nonsmoking areas.

431 (iv) during construction or rehabilitation, the ventilation system
432 components and pathways shall be protected from contamination
433 in accordance with an indoor air quality management plan for the
434 construction or rehabilitation process that meets the standards
435 established in regulations promulgated by DOER within six
436 months of the effective date of this section pursuant to paragraph
437 two of subdivision (E) of this section. In the event that such areas
438 are not protected from contamination in accordance with such
439 standards, they shall be cleaned prior to occupancy.

440 (v) a licensed engineer, certified industrial hygienist, or other
441 licensed or certified professional whom the commissioner or
442 DOER designates immediately following occupancy, if any, and
443 on an annual basis, to monitor supply and return air and ambient
444 air for carbon monoxide, carbon dioxide, total volatile organic
445 compounds, radon, and particulate matter. Provided, however,
446 once radon measurements have been found to be satisfactory, sub-
447 sequent annual testing is not required. The taxpayer shall record
448 baseline readings immediately following occupancy, if any, and
449 annually thereafter. In the event that the taxpayer does not estab-
450 lish that during a taxable year during which the tenant space is
451 occupied, indoor air quality met the standards established in regu-
452 lations promulgated by DOER within one year of adoption of this
453 Act pursuant to paragraph two of subdivision (E) of this section,
454 the tenant space shall not constitute green tenant space.

455 (vi) all plumbing fixtures in the tenant space shall meet the
456 plumbing fixture requirements of the State Plumbing Code or suc-
457 cessor provision in effect at the time the improvements with
458 respect to which a tax credit is claimed are placed in service.

459 (vii) all building materials, finishes and furnishings selected for
460 use in the tenant space and subject to the regulations promulgated
461 by DOER within six months of the effective date of this section
462 pursuant to subparagraph (a) of paragraph three of subdivision (E)
463 of this section, shall meet the standards established by such regu-
464 lations or, in the event that such standards are revised, the stan-
465 dards in effect at the time the improvements with respect to which
466 a tax credit is claimed are placed in service, provided that, with
467 respect to furnishings, this requirement shall apply only to newly
468 purchased items.

469 (12) “Incremental cost of building-integrated photovoltaic mod-
470 ules” means:

471 (a) the cost of building-integrated photovoltaic modules and
472 any associated inverter, additional wiring or other electrical equip-
473 ment or additional mounting or structural materials, less the cost
474 of spandrel glass or other building material that would have been
475 used in the event that building-integrated photovoltaic modules
476 were not installed,

477 (b) incremental labor costs properly allocable to on-site prepa-
478 ration, assembly and original installation of photovoltaic modules,
479 and

480 (c) incremental architectural and engineering services and
481 designs and plans directly related to the construction or installa-
482 tion of photovoltaic modules.

483 (13) “qualifying alternate energy sources” means build-inte-
484 grated and non-building-integrated photovoltaic modules and fuel
485 cells installed to serve the base building or tenant space which
486 have the capability to monitor their ac output, and which are vali-
487 dated upon installation, and annually thereafter, to ensure that
488 such systems meet their design specifications.

489 (14) “tenant improvements” means improvements which are
490 necessary or appropriate to support or conduct the business of a
491 tenant or occupying owner.

492 (15) “tenant space” means the portion of a building intended for
493 occupancy by a tenant or occupying owner.

494 (15) CERTIFICATIONS

495 (1) INITIAL CREDIT COMPONENT CERTIFICATE. Upon
496 application by a taxpayer, DOER shall issue an initial credit com-
497 ponent certificate where the taxpayer has made a showing that the
498 taxpayer is likely within a reasonable time to place in service
499 property which would warrant the allowance of a credit under this
500 section. Such certificate shall state the first taxable year for which
501 the credit may be claimed and an expiration date, and shall apply
502 only to property placed in service by such expiration date. Such
503 expiration date may be extended at the discretion of DOER, in
504 order to avoid unwarranted hardship. Such certificates may be
505 issued in years 2001-2005. Such certificates shall state the max-
506 imum amount of credit component allowable for each of the five
507 taxable years for which the credit component is allowed, under
508 paragraphs two through seven of subdivision (a) of this section.

509 (2) ELIGIBILITY CERTIFICATE. For each taxable year for
510 which a taxpayer claims a credit under this section with respect to
511 a green building, green base building or green tenant space, a fuel
512 cell, or photovoltaic modules, the taxpayer shall obtain from an
513 architect or professional engineer licensed to practice in this state
514 an eligibility certificate. Such certificate shall consist of a certifi-
515 cation, under the seal of such architect or engineer, that the
516 building, base building or tenant space with respect to which the
517 credit is claimed is a green building, green base building or green
518 tenant space, respectively, that the fuel cell or photovoltaic mod-
519 ules constitute qualifying alternate energy sources and remains in
520 service. Such certification shall be made in accordance with the
521 standards and guidelines in effect at the time the property which is
522 the basis for the credit was placed in service. Such certification
523 shall set forth the specific findings upon which the certification
524 was based. The taxpayer shall file such certificate, and the associ-
525 ated initial credit component certificate, with the claim for credit
526 and shall file duplicate copies with DOER. Such certificate shall
527 include sufficient information to identify each building or space,
528 and such other information as DOER and the commissioner shall
529 prescribe.

530 (3) WRONGFUL CERTIFICATION. If DOER has reason to
531 believe that an architect or professional engineer, in making any
532 certification under this subdivision, engaged in professional mis-
533 conduct, then DOER shall so inform the Board of Registration of
534 Architects and/or Board of Registration of Engineers and Land
535 Surveyors.

536 (D) OTHER REQUIREMENTS; MISCELLANEOUS.

537 (1) RECORD KEEPING. Each taxpayer shall, for any taxable
538 year for which the green building credit provided for under this
539 section is claimed, maintain records of the following information:

540 (a) annual energy consumption for building, base building or
541 tenant space;

542 (b) annual results of air monitoring;

543 (c) annual confirmation that the building, base building or
544 tenant space continues to meet requirements regarding smoking
545 areas, if provided;

546 (d) tenant guidelines referred to in subparagraph (i) of para-
547 graph nine of subdivision (B) of this section, if applicable;

548 (e) all written notification of tenants and requests to remedy
549 any indoor air quality problems;

550 (f) initial and annual (by month) results of validation of perfor-
551 mance of photovoltaic modules and fuel cells; and

552 (g) certifications as to off-gassing and other contamination, as
553 prescribed in subclause (iii) of clause (ii) of subparagraph (b) of
554 paragraph nine of subdivision (B) of this section, where applic-
555 able.

556 (2) REPORTING TO DOER. Each taxpayer shall also provide
557 to DOER the information described in paragraph one of this sub-
558 division, in the form and at the time prescribed by DOER, such
559 time to be determined in consultation with the commissioner.
560 Such information shall be provided to DOER with respect to each
561 taxable year with respect to which the taxpayer claims a credit
562 under this section.

563 (3) REGULATIONS. The DOER is hereby authorized to pro-
564 mulgate and adopt regulations necessary to the implementation of
565 this section. Such regulations must be adopted within six months
566 of the effective date of this section. Such regulations shall con-
567 strue the provisions of this section in such a manner as to
568 encourage the development of green buildings, green base build-
569 ings and green tenant space and to maintain high but commer-
570 cially reasonable standards for obtaining tax credits hereunder.
571 Such regulations shall establish a reasonable time or period of
572 time for submission of applications, and shall establish a method
573 for allocating initial credit component certificates among eligible
574 applicants. Regulations, standards or requirements adopted pur-
575 suant to this section shall apply only to a “green base building” as
576 defined in paragraph nine of subdivision (B) of this section, a
577 “green building” as defined in paragraph ten of subdivision (B) or
578 “green tenant space” as defined in paragraph eleven of subdivision
579 (B) of this section.

580 (4) REPORT. On or before April first, two thousand six the
581 commissioner of DOER shall submit a written report regarding
582 the number of certifications and taxpayers claiming the credit pro-
583 vided for under this section; the amount of the credits claimed, the
584 geographical distribution of the credits claimed; and any other
585 such available information DOER may deem meaningful and
586 appropriate. A preliminary version of such report shall be so

587 issued by April first, two thousand six. The commissioner of
588 DOER shall ensure that the information is presented and/or classi-
589 fied in a manner consistent with the secrecy requirements of this
590 chapter. The report shall be submitted to the governor, the presi-
591 dent of the senate, the speaker of the house, the chairman of the
592 senate finance committee and the chairman of the house ways and
593 means committee.

594 (E) STANDARDS AND REGULATIONS.

595 (1) ENERGY STANDARDS: BASE BUILDINGS. Within six
596 months of the effective date of this section, DOER shall promul-
597 gate the following, with respect to base buildings:

598 (a) regulations establishing standards for energy use for eligible
599 buildings. DOER shall review and update such regulations at least
600 every two years from the date on which such regulations are pro-
601 mulgated.

602 (b) regulations establishing standards for appliances and
603 heating, cooling and water heating equipment that, on the effec-
604 tive date of this section, are covered by specifications from orga-
605 nizations such as the United States Department of Energy or
606 Environmental Protection Agency. The development of such regu-
607 lations shall be informed by such specifications. DOER shall
608 review and update such regulations at least every two years from
609 the date on which such regulations are promulgated.

610 (c) regulations indicating the methodology by which a taxpayer
611 shall demonstrate compliance with subparagraph (a) of paragraph
612 nine of subdivision (B) of this section. Such regulations shall
613 include, at a minimum, a requirement to conduct hourly computer
614 modeling for one full year.

615 (d) regulations establishing standards for the commissioning of
616 buildings.

617 (2) INDOOR AIR STANDARDS: BASE BUILDINGS. Within
618 six months of the effective date of this section, DOER shall pro-
619 mulgate regulations establishing standards, with respect to base
620 buildings, for (a) ventilation and exchange of indoor/outdoor air,
621 (b) indoor air quality management plans for the construction or
622 rehabilitation process, and (c) indoor air quality with respect to
623 levels of carbon monoxide, carbon dioxide and total volatile
624 organic compounds, radon and particulate matter.

625 (3) STANDARDS FOR MATERIALS, WATER CONSERVA-
626 TION, DRAINAGE: BASE BUILDINGS. Within six months of
627 the effective date of this section, DOER shall promulgate the
628 following, with regard to base buildings:

629 (a) regulations establishing standards for building materials,
630 finishes and furnishings regarding minimum percentages of recy-
631 cled content and renewable source material and maximum levels
632 of toxicity and volatile organic compounds and any other stan-
633 dards that the DOER deems appropriate. Standards shall be devel-
634 oped for building materials, finishes and furnishings, including
635 but not limited to concrete and concrete masonry units; wood and
636 wood products; millwork substrates; insulation; ceramic,
637 ceramic/glass and cementitious tiles; ceiling tiles and panels;
638 flooring and carpet; paints, coatings, sealants and adhesives; and
639 furniture. The development of such standards shall be informed by
640 the LEED rating system. The DOER shall review and update such
641 regulations at least every two years from the date on which such
642 regulations are promulgated. For purposes of this clause, “LEED
643 rating system” means the leadership in energy and environmental
644 design green building rating system criteria being developed by
645 the United States Green Building Council.

646 (b) regulations establishing standards for buildings located in
647 areas where water use is not metered, which regulations shall
648 require, at a minimum, that the building include one of the
649 following features:

650 (i) a gray water system that recovers non-sewage waste water
651 or uses roof or ground storm water collection systems, or recovers
652 ground water from sump pumps;

653 (ii) for buildings with a cooling tower system, such system
654 shall be designed with delimiters to reduce drift and evaporation;
655 or

656 (iii) for buildings with exterior plants, all such plants shall be
657 tolerant of climate, soils and natural water availability and shall
658 not receive watering from municipal potable water after a period
659 of establishment is complete.

660 (c) regulations establishing standards for buildings located in
661 areas that do not have sewers or that have designated storm
662 sewers, which regulations shall require, at a minimum, that the
663 building shall include one of the following features:

664 (i) an oil grit separator or water quality pond for pretreatment
665 of runoff from any surface parking areas; or
666 (ii) at least fifty percent of non-landscaped areas (including
667 roadways, surface parking, plazas and pathways), if any, shall be
668 comprised of pervious paving materials.
669 (d) regulations indicating the methodology by which taxpayers
670 shall demonstrate compliance with subparagraphs (b) and (c) of
671 paragraph nine of subdivision (B) of this section.
672 (4) ENERGY STANDARDS: TENANT SPACE. Within six
673 months of the effective date of this section, DOER shall promul-
674 gate regulations, with respect to tenant space, indicating the
675 methodology by which taxpayers shall demonstrate compliance
676 with subparagraph (a) of paragraph eleven of subdivision (B) of
677 this section.
678 (5) STANDARDS FOR INDOOR AIR QUALITY, BUILDING
679 MATERIALS, FINISHES AND FURNISHINGS: TENANT
680 SPACE. Within six months of the effective date of this section,
681 DOER shall promulgate regulations, with respect to tenant space,
682 indicating the methodology by which taxpayers shall demonstrate
683 compliance with subparagraph (b) of paragraph eleven of subdivi-
684 sion (B) of this section.
685 (6) FUNDING FOR REGULATIONS AND EDUCATION.
686 Funding for 3.0 full-time staff positions will be made available to
687 DOER for completion of the regulations required under this
688 section and for administration of this section. Additional funding
689 of \$150,000 will be made available for state-wide educational
690 seminars and other education programs to assist developers, ten-
691 ants, and any others who may participate in the green building tax
692 credit program.